



Item #5 Yellow Fin Bar & Grill-Alc Bev
Staff Report

MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission
Through: Mayté Santamaria, Senior Director of Planning & Environmental Resources
From: Kevin Bond, AICP, Planning and Development Review Manager
Date: November 30, 2016
Subject: *Request for a 6COP S (Special Motel / Hotel) Alcoholic Beverage Use Permit, Yellowfin Bar & Grill / Oceanside Investors LLC, 5950 Peninsular Avenue, Stock Island, Mile Marker 5.5, Real Estate Numbers 00126210-000000, 00127420-000000, 00127420-000100 and 00127440-000700. (File # 2016-193)*

Meeting: December 15, 2016

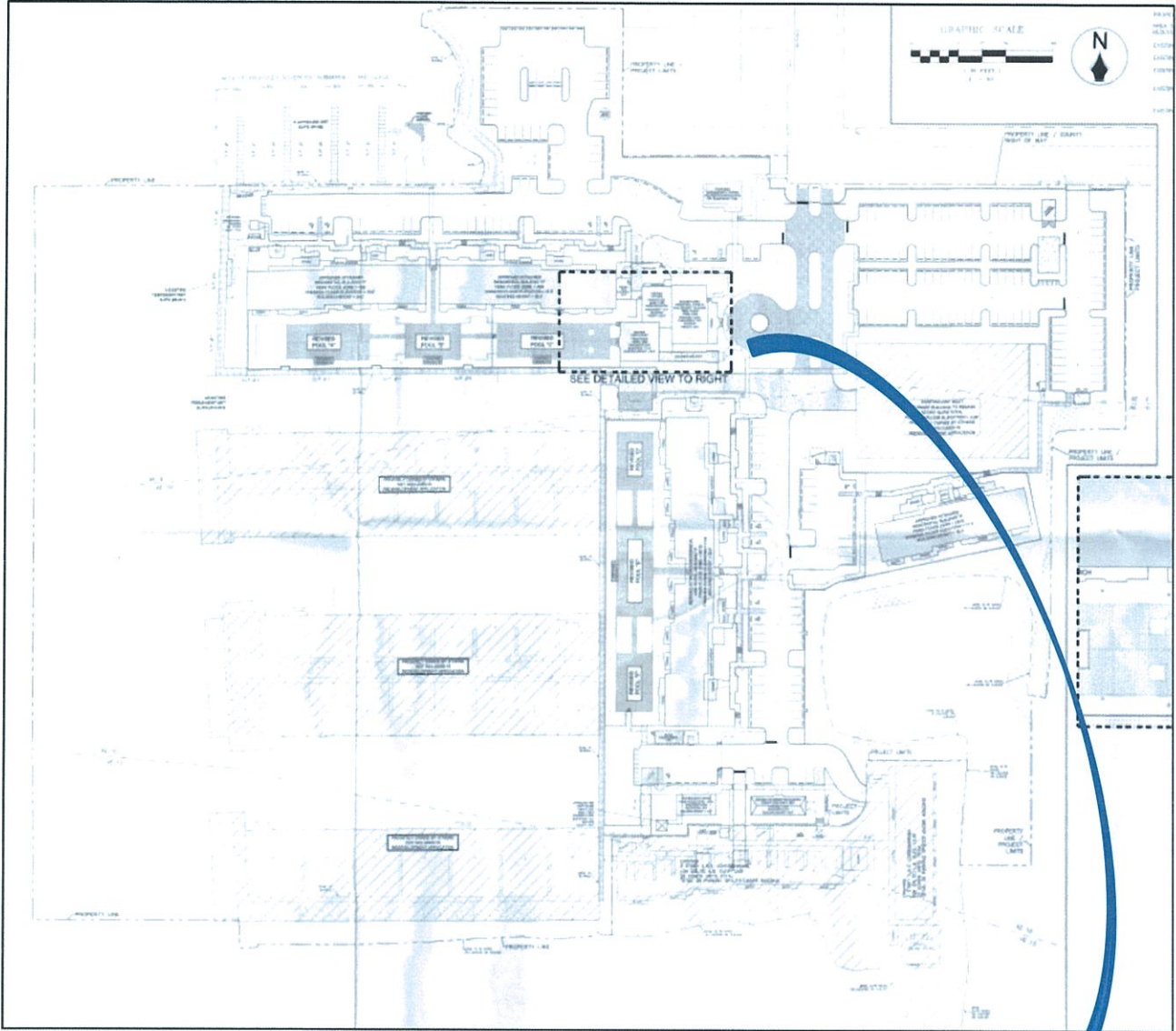
I REQUEST:

The applicant, Jiwan Noah Singh of Oceanside Investors, LLC—doing business as Yellowfin Bar and Grill and Oceans Edge Key West—requests approval of a 6COP S Alcoholic Beverage Use Permit, which would allow beer, wine and liquor in connection with operation of hotel, motel, motor court or condominium; sale by the drink for consumption on premises and package sales in sealed containers.

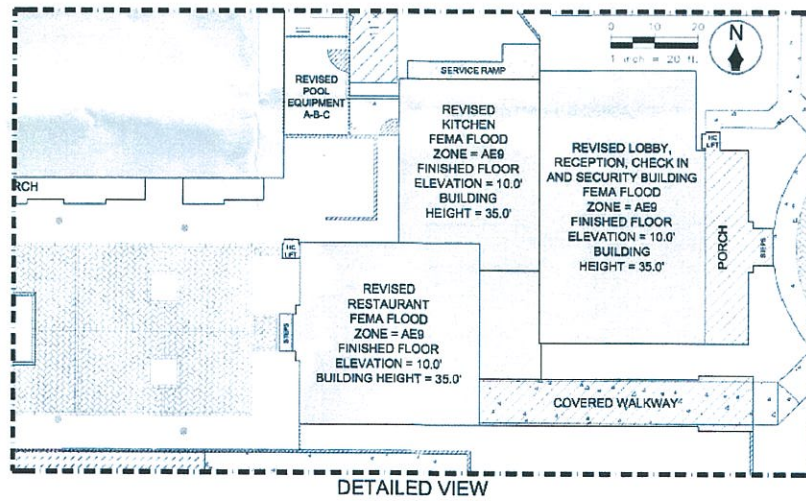


Subject Property with Land Use Districts Overlaid (Aerial dated 2015)

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*Excerpt of
Site Plan
for Subject
Property*

II BACKGROUND INFORMATION:

Location / Address: 5950 Peninsular Avenue, Stock Island, Mile Marker 5.5 oceanside

Legal Description: Lots 30, 31 and ½ of Lot 32, Block 46, portions of Lots 1, 2 and 3, Block 60, portions of Lots 1, 2 and 3, Block 61, the abandoned portion of Peninsular Avenue lying between Blocks 46 and 60, the abandoned portion of Maloney Avenue lying between Blocks 60 and 61, McDonald's Plat, also known as Maloney Subdivision (Plat Book 1, Page 55), Stock Island, Monroe County, Florida

Real Estate Numbers: 00126210-000000, 00127420-000000, 00127420-000100 and 00127440-000700

Applicant/Agent: Jiwan Noah Singh

Property Owner: Oceanside Investors, LLC

Size of Site: 534,040.8 square feet (12.26 acres) of upland per approved site plan

Land Use District: Mixed Use (MU)

Future Land Use Map (FLUM) Designation: Mixed Use/Commercial (MC)

Tier Designation: III (infill area)

Existing Use: Marina, commercial retail, office and residential

Existing Vegetation / Habitat: Developed/scarified with fringing mangroves along some segments of shoreline

Community Character of Immediate Vicinity: Uses within 500 feet include a mix of commercial, residential and industrial uses.

Flood Zone: AE-9, AE-10 and VE-13

III RELEVANT PRIOR COUNTY ACTIONS:

In 1996, the Oceanside Investors' predecessor in interest applied for a minor conditional use permit for part of the Oceanside Marina property, 5970 Peninsular Avenue (real estate # 00127420-000100 only). The approval is memorialized by Development Order #12-96, approved by the Director of Planning on July 23, 1996, and recorded in the official records of Monroe County on September 6, 1996. The permit allowed for the construction of a 9,600 SF storage building and other associated accessory improvements (Planning Department File # 96045).

In 1997, the Oceanside Investors' predecessor in interest applied for an amendment to the major conditional use permit for part of the current Oceanside Marina property, 5950 Peninsular Avenue (real estate # 00127420-000000 only). The approval is memorialized by Planning Commission Resolution No. P52-97, approved by the Planning Commission at a public hearing on July 10, 1997, signed by the Planning Commission Chair on August 18, 1999, and recorded in the official records of Monroe County on August 24, 1999. The amendment allowed for the construction of 22 attached, market rate residential dwelling units; one boat storage building; an addition to an existing restaurant; and other associated accessory improvements (Planning Department File # 97021).

In 1999, the County, the Florida Department of Community Affairs, Paradise Island Park, Inc. and Key West Oceanside Marina entered into a development agreement allowing the transfer of 22 market-rate TREs and TDRs from Paradise Island Park to the Oceanside Marina property. The development agreement was recorded in the official records of Monroe

County on April 7, 2000 (Book # 1627, Pages # 444 through 468) (Planning Department File # 99039).

Following the issuance of Planning Commission Resolution No. P52-97, Oceanside Investors' predecessor in interest acquired the adjacent property, 5970 Peninsular Avenue. Further, the 22 attached, market rate residential dwelling units approved by Planning Commission Resolution No. P52-97 were constructed and sold under condominium ownership. As such, they are not part of the Oceanside Marina property.

In 2007, the Oceanside Investors' predecessor in interest applied for an amendment to a major conditional use permit for part of the current Oceanside Marina property, 5950 and 5970 Peninsular Avenue (real estate # 00127420-000000 and real estate # 00127420-000100 only, as well as other property associated with a condominium development). The approval is memorialized by Planning Commission Resolution No. P21-07, approved by the Planning Commission at a public hearing on April 11, 2007, signed by the Planning Commission Chair on May 9, 2007, and recorded in the official records of Monroe County on July 13, 2007. The amendment allowed for the demolition of several buildings and construction of 32 attached, market-rate residential dwelling units; two boat barns; eight wet slips; and other associated accessory improvements. P21-07 authorized vacation rental use of the 32 attached dwelling units. Please note that this project was not fully completed and the 32 dwelling units were never constructed (Planning Department File # 26028).

In 2013, Oceanside Investors applied for the development agreement, which is currently in effect. The original agreement was approved by the BOCC at a public hearing on December 11, 2013, and recorded in the official records of Monroe County on December 19, 2013. The original agreement allowed for the transfer of 46 market-rate TREs from three sender sites to the Oceanside Marina property. The transferred market-rate permanent TRE's were required to be converted to, or replaced with, an equivalent amount of 99-year deed-restricted affordable housing, prior to the a C.O. being issued for market-rate permanent units at 5950 and 5970 Peninsular Avenue (agreement includes the affordable housing income types shall be maintained approximately at 25% low, 25% median and 50% moderate; and the existing occupants of the mobile home sites shall be given an opportunity to reside there up to 7 years at the same rental rate). The agreement approved the addition of up to 78 new, market-rate residential dwelling units, which may be used as vacation rentals, up to 5 new hotel rooms, a new restaurant with up to 150 seats, and other improvements related to the existing, partially-condominiumized marina and accessory development. The agreement also conceptually approved the scope of work of a concurrent major conditional use permit application and associated site plan (File # 2013-069). [Please note that as of the date of this report, this project has not been completed. The applicant has 10 years from the effective date of the development agreement to complete the project.]

TRE sender sites	Low income	Median income	Moderate income
Stock Island Suncrest Property	3	-	4
Summerland Palms Property	7	10	5
Cudjoe Coco Palms Property	1	2	14
TOTAL	11	12	23
% of total	24%	26%	50%

1 In 2013, Oceanside Investors applied for an amendment to the Oceanside Marina property's
2 major conditional use permit to improve the marina's facilities, construct 78 new market rate
3 residential dwelling units, construct 5 new hotel rooms, construct a new restaurant and carry
4 out associated site improvements. The approval is memorialized by Planning Commission
5 Resolution No. P04-14, approved by the Planning Commission at a public hearing on
6 February 26, 2014, signed by the Planning Commission Chair on March 26, 2014, and
7 recorded in the official records of Monroe County on June 13, 2014 (File # 2013-068).
8 [Please note that as of the date of this report, this project has not been completed. The
9 applicant has 10 years from the effective date of the development agreement to complete the
10 project.]
11

12 In 2014, Oceanside Investors applied for a minor conditional use permit to transfer 9.3 of the
13 TDR's required to facilitate the project approved by Resolution No. P04-14 to the Oceanside
14 Marina property. The approval is memorialized by Development Order #04-14, reviewed by
15 the DRC at a public meeting on October 28, 2014, signed by the Senior Director of Planning
16 & Environmental Resources on November 19, 2014, and recorded in the official records of
17 Monroe County on March 6, 2015 (Planning Department File # 2014-041). The Development
18 Order required the sender site(s) to be a) dedicated to the County or b) placed in a
19 conservation easement prohibiting its future development.
20

21 In 2014, Oceanside Investors applied for a road abandonment of a segment of Peninsular
22 Avenue located north of the Oceanside Marina property (lying between Block 46 and Block
23 60). The abandonment was approved by the BOCC on June 30, 2014, as memorialized in
24 Resolution No. 116-2014 (File # 2014-054). Note: As a result, the Oceanside Marina
25 property increased in size.
26

27 In 2014, Oceanside Investors entered into a purchase and sale agreement with Monroe
28 County to purchase the Hickory House property located north of the Oceanside Marina
29 property. On February 3, 2015, Oceanside Investors closed on the Hickory House property.
30 Note: As a result, the Oceanside Marina property increased in size.
31

32 In 2014, Oceanside Investors applied for an amendment to the development agreement
33 currently in effect. The first amendment was recorded in the official records of Monroe
34 County on December 17, 2014 (File # 2014-112). The first amendment added adjacent
35 property and the abandoned roadway (as memorialized in Resolution No. 116-2014),
36 increased the allowed number of hotel rooms from 5 to 17, allowed the transfer of up to 12
37 vested rights associated with a previous approval related to Hawk's Cay and amended the
38 conceptual site plan.
39

40 In 2014, Oceanside Investors applied for a minor conditional use permit to transfer 24.1 of
41 the TDRs required to facilitate the project approved by Resolution No. P04-14 to the
42 Oceanside Marina property. The approval is memorialized by Development Order #06-14,
43 reviewed by the DRC at a public meeting on November 17, 2014, signed by the Senior
44 Director of Planning & Environmental Resources on December 12, 2014 and recorded in the
45 official records of Monroe County on January 29, 2015 (Planning Department File # 2014-

139). The Development Order required the sender site(s) to be a) dedicated to the County or b) placed in a conservation easement prohibiting its future development.

In 2014, Oceanside Investors applied for an abandonment of a second segment of Peninsular Avenue located north of the Oceanside Marina property (lying between Block 46 and Block 60). The abandonment was approved by the BOCC on March 18, 2015 (File # 2014-132). Note: As a result, the Oceanside Marina property increased in size.

In 2014, Oceanside Investors applied for an amendment to the Oceanside Marina property's major conditional use permit to add adjacent property and the abandoned roadway, increase the allowed number of hotel rooms from 5 to 17 and amend the approved site plan. The approval is memorialized by Planning Commission Resolution No. P41-14, approved by the Planning Commission at a public hearing on November 19, 2014, signed by the Planning Commission Chair on March 25, 2015 (File # 2014-133).

In 2014, Oceanside Investors applied for a minor conditional use permit to transfer 5 transient TREs to the Oceanside Marina property. The approval is memorialized by Development Order #06-15, reviewed by the DRC at a public meeting on April 28, 2015, signed by the Senior Director of Planning & Environmental Resources on May 22, 2015 and recorded in the official records of Monroe County on August 11, 2015 (Planning Department File # 2014-141).

In 2014, Oceanside Investors applied for a second amendment to the development agreement which is currently in effect. The second amendment was recorded in the official records of Monroe County on July 20, 2015 (File # 2014-175). The second amendment added adjacent abandoned right-of-way (as memorialized in Resolution No. 115-2015), increased the total number of transferred market rate residential units from 78 to 79 and amended the conceptual site plan.

TRE sender sites	Low income	Median income	Moderate income
Stock Island Suncrest Property	3	-	4
Summerland Palms Property	7	10	5
Cudjoe Coco Palms Property	1	2	14
TOTAL	11	12	23
% of total	24%	26%	50%
Approved 1 additional moderate affordable ROGO allocation for Stock Island Holdings			
Stock Island Holdings Property	-	-	1
% of total	23%	25%	51%

In 2013, Oceanside Investors applied for a minor conditional use permit to transfer 45 ROGO Exemptions to the Oceanside Marina Property. The approval is memorialized by Development Order #05-15, reviewed by the DRC at a public meeting on June 23, 2015, signed by the Senior Director of Planning & Environmental Resources on June 25, 2015 (Planning Department File # 2013-070).

In 2015, Oceanside Investors applied for a minor conditional use permit to allow the transfer of two (2) ROGO Exemptions to the Oceanside Marina Property. The approval is

1 memorialized by Development Order #07-15, reviewed by the DRC at a public meeting on
2 September 29, 2015, signed by the Senior Director of Planning & Environmental Resources
3 on October 22, 2015 (File # 2015-100).
4

5 In 2015, Oceanside Investors applied for a minor conditional use permit to transfer 0.4
6 TDR's to the Oceanside Marina property. The approval is memorialized by Development
7 Order #09-15, reviewed by the DRC at a public meeting on September 29, 2015, signed by
8 the Senior Director of Planning & Environmental Resources on October 22, 2015 (File #
9 2015-101). The Development Order required the sender site(s) to be a) dedicated to the
10 County or b) placed in a conservation easement prohibiting its future development.
11

12 In 2015, Oceanside Investors applied for a minor conditional use permit to transfer 1 TDR's
13 to the Oceanside Marina property. The approval is memorialized by Development Order #08-
14 15, reviewed by the DRC at a public meeting on September 29, 2015, signed by the Senior
15 Director of Planning & Environmental Resources on October 22, 2015 (File # 2015-102).
16 The Development Order required the sender site(s) to be a) dedicated to the County or b)
17 placed in a conservation easement prohibiting its future development.
18

19 In 2015, Oceanside Investors applied for a minor deviation to the major conditional use
20 permit in order to allow the construction of one additional market rate residential dwelling
21 unit. The deviation was approved by the Senior Director of Planning & Environmental
22 Resources on December 10, 2015 (File # 2014-176).
23

24 On February 1, 2016, the Senior Director of Planning & Environmental Resources on
25 February 1, 2016 approved a minor deviation to the major conditional use permit in order to
26 revise the approved site plan. The changes included removal of the resort swimming pool on
27 the northernmost parcel (RE # 00126210-000000), relocation of the watersports, fitness and
28 restroom building and the reconfiguration of the off-street parking for the site (File # 2016-
29 001).
30

31 On August 1, 2016, the Senior Director of Planning & Environmental Resources approved a
32 minor deviation to the major conditional use permit in order to revise the approved site plan.
33 The changes included the elimination of the proposed gatehouse building (gates maintained)
34 and the repositioning of the proposed dockmaster building, the reconfiguration of the off-
35 street parking (parking maintained at 346 spaces) and sidewalks and inclusion of arbors, the
36 provision for bait and ice vending and expansion of the fish cleaning station, and other
37 changes to open space for the site (File # 2016-103).
38

39 **IV REVIEW OF APPLICATION:**

40 Pursuant to Section 3-6(e) of the Monroe County, Florida, Code of Ordinances (the "Code"),
41 the Planning Commission shall give due consideration to the following factors as they may
42 apply to the particular application prior to rendering its decision to grant or deny the
43 requested permit:
44

1 (1) *The effect of such use upon surrounding properties and the immediate neighborhood as*
2 *represented by property owners within 500 feet of the premises. For the purposes of this*
3 *section, the term "premises" means the entire project site of a shopping center:*
4

5 The uses on the subject property, which is in the process of being redeveloped, include a
6 marina with 111 wet slips, 79 market-rate dwelling units that may be used as vacation
7 rentals, 17 hotel rooms and a restaurant. Surrounding properties within 500 feet of the
8 premises include commercial, residential and industrial uses. The subject property is
9 located at the terminal end of Maloney Avenue at the intersection of Peninsular Avenue.
10 This end of Maloney Avenue is dominated by two major marinas: Oceanside Marina and
11 Key West Harbour Marina.
12

13 Given that the existing and proposed residential, hotel, marina and restaurant uses have
14 been previously reviewed and approved by the County numerous times, and that the
15 property previously was developed with the Sailfish restaurant and the Hickory House,
16 staff does not anticipate that approval of the requested 6COP S Alcoholic Beverage Use
17 Permit would have an adverse effect on surrounding properties or the immediate
18 neighborhood.
19

20 Please note that no members of the community, either in support or opposition to the
21 application, contacted the Planning and Environmental Resources Department as of the
22 date of this report.
23

24 IN COMPLIANCE
25

26 (2) *The suitability of the premises in regard to its location, site characteristics and intended*
27 *purpose. Lighting on the permitted premises shall be shuttered and shielded from*
28 *surrounding properties, and construction of such permitted properties shall be*
29 *soundproofed. In the event music and entertainment are permitted, the premises shall be*
30 *air conditioned:*
31

32 Given the property's location within the Mixed Use (MU) Land Use District and the prior
33 County development approvals, the subject premises would be suitable. Approval of the
34 requested 6COP S alcoholic beverage use permit would allow beer, wine and liquor to be
35 sold for consumption within the hotel and the restaurant. The requested alcohol license is
36 consistent with these intended purposes. Additionally, the subject property previously had
37 both a 2COP and a 6COP license for Key West Oceanside Marina and Oceanside Marina
38 Grill, which both expired.
39

40 Lighting on the premises is subject to County Land Development Code Chapter 114,
41 Article VI. Lighting was reviewed and approved with the ongoing redevelopment of the
42 property.
43

44 No music or entertainment is proposed by the applicant at this time.
45

46 IN COMPLIANCE

1 (3) *Access, traffic generation, road capacities, and parking requirements:*

2
3 No changes to access or parking are proposed by the applicant as part of the subject
4 application, and none would be required by County Code at this time. According to the
5 prior approved site plan, access to the property is provided by two driveways along
6 Peninsular Avenue and will have 346 off-street parking spaces. The proposed use is not
7 anticipated to have an impact on traffic generation or road capacities due to the use being
8 the same use as previously reviewed, approved and allowed on the property. If
9 necessitated by a future substantial improvement or a change of use, any nonconforming
10 parking and access would have to be brought into compliance to the maximum extent
11 practical pursuant to Code Section 102-59.

12
13 IN COMPLIANCE

14
15 (4) *Demands upon utilities, community facilities and public services:*

16
17 It is not anticipated that the issuance of a 6COP S alcohol beverage use permit would
18 increase demands upon any utilities, community facilities or public services. Any such
19 demands would have been reviewed during the prior County development approvals.

20
21 IN COMPLIANCE

22
23 (5) *Compliance with the county's restrictions or requirements and any valid regulations:*

24
25 As of the date of this report, there are two open code compliance cases related to the
26 property. Case # CE16050091 (early construction activities/noise complaint from
27 5/6/2016) on RE # 00127420-000100 and Case # CE16060045 (early construction
28 activities/noise complaint from 6/13/2016) on RE # 00127420-000000 both involve
29 construction-related complaints from surrounding property owners. A Notice of Violation
30 was not issued, but code compliance staff addressed the hours of engaging work with the
31 property owner and general contractor. The property is under active construction and the
32 County's Planning and Environmental Resources Department will continue to conduct
33 permit-related inspections on the property to ensure compliance with development
34 approvals. Development is anticipated to be completed December 2016.

35
36 **V RECOMMENDATION:**

37
38 Staff recommends APPROVAL to the Planning Commission of the requested 6COP S
39 (Special Motel/Hotel) Alcoholic Beverage Use Permit, which would allow beer, wine and
40 liquor in connection with operation of hotel, motel, motor court or condominium; sale by the
41 drink for consumption on premises and package sales in sealed containers; with the following
42 conditions (however, valid objections from surrounding property owners at the public
43 hearing may lead the Planning and Environmental Resources Department to reevaluate the
44 recommendation or suggested conditions):

- 1 1. Alcoholic Beverage Use Permits issued by virtue of Section 3-6 of the Monroe County
2 Code shall be deemed to be a privilege running with the land. The sale of the real
3 property that has been granted an Alcoholic Beverage Use Permit shall automatically vest
4 the purchaser thereof with all rights and obligations originally granted or imposed to or
5 on the applicant. Such privilege may not be separated from the fee simple interest in the
6 realty.
7
- 8 2. Alcohol service sales and consumption shall occur only within areas allowed for such use
9 and approved by the Monroe County Planning & Environmental Resources Department.
10 Specifically, this approval shall apply only to the hotel, restaurant and other areas as
11 permitted under Florida Statutes for a 6COP S alcohol license.
12
- 13 3. In the event that the holder's license by the Florida Department of Business and
14 Professional Regulation (DBPR) expires and lapses, this Alcoholic Beverage Use Permit
15 approval shall be null and void as of the date of the DBPR license expiration. Additional
16 approval by the Planning Commission shall be required to renew the Alcoholic Beverage
17 Use Permit.
18

19 **VI ATTACHMENTS:**

20 Attachment 1: Monroe County Code Section 3-6, Regulation and control over sale

Monroe County Code – Chapter 3, Alcoholic Beverages**Sec. 3-6. - Regulation and control over sale [of alcoholic beverages].**

- (a) *Establishment of use permit procedure.* This section is designed and intended to provide for reasonable regulation and control over the sale of alcoholic beverages within the unincorporated areas of the county by establishing an alcoholic beverage use permit procedure and providing criteria to be used to ensure that all future proliferation of alcoholic beverage use enterprises within the unincorporated areas of the county be compatible with adjoining and surrounding land uses and the county's comprehensive plan, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact upon the health, safety and welfare of the citizens and residents of the county. All persons, firms, partnerships or corporations who have received approval from the zoning board or board of county commissioners under the former provisions of section 19-218 of the Monroe County Code, as same heretofore existed, shall retain all rights and privileges heretofore granted under such section.
- (b) *New applicants for permit.* All persons desiring to sell alcoholic beverages upon any premises located within the unincorporated areas of the county and who desire to do so upon a premises not heretofore approved by the zoning board or board of county commissioners under the former section 19-218, shall obtain an alcoholic beverage use permit using the procedure outlined in subsection (d) of this section.
- (c) *Classifications.* Corresponding to those alcoholic beverage license classifications as heretofore and hereafter adopted by the state, alcoholic beverage use permits hereafter issued pursuant to this chapter shall be classified as follows:
 - (1) 1APS: Beer, package only;
 - (2) 1COP: Beer, on-premises and package;
 - (3) 2APS: Beer and wine, package only;
 - (4) 2COP: Beer and wine, on-premises and package;
 - (5) 6COP: Beer, wine and liquor, on-premises and package;
 - (6) 6COP SRX: Restaurant, no package sales;
 - (7) 6COP SR: Restaurant, package sale;
 - (8) 6COP S: Motel, package sales;
 - (9) 6COP SBX: Bowling, no package sales;
 - (10) 6COP SPX: Boat, no package sales;
 - (11) 3BPS: Beer, wine and liquor, package sales only;
 - (12) 3M: Additional license for 6COP, over three bars; and
 - (13) 12RT: Racetrack, liquor, no package sales.
- (d) *Procedure.* The following procedure shall be followed on any application for an alcoholic beverage use permit hereafter made:
 - (1) Applications for alcoholic beverage use permits shall be submitted to the director of planning in writing on forms provided by the director. Such applications must be signed by the owner of the real property for which the permit is requested. Lessees of the premises may apply for such permits, provided that proper authorization from the owner of the premises is given and the application for permit is cosigned by such owner.
 - (2) Upon receipt of a properly completed and executed application for an alcoholic beverage use permit stating the exact classification requested along with the necessary fee, the director of planning shall schedule a public hearing before the planning commission and shall advise the applicant of the date and place of the public hearing.
 - (3) Notice of the application and of the public hearing thereon shall be mailed by the director of planning to all owners of real property within a radius of 500 feet of the affected premises. In the case of a shopping center, the 500 feet shall be measured from the perimeter of the entire shopping center itself rather than from the individual unit for which approval is sought. Notice shall also be provided in a newspaper of general circulation in the manner prescribed in section 110-5. For the purposes of this section, the term "shopping center" means a contiguous group of individual units, in any combination, devoted to commercial retail low-intensity uses,

Attachment 1

commercial retail medium-intensity uses, commercial retail high-intensity uses, and office uses, as those phrases are defined in section 101-1, with immediate off-street parking facilities, and originally planned and developed as a single project. The shopping center's single project status shall not be affected by the nature of the ownership of any of the individual office or commercial retail units, within the shopping center.

- (4) At the hearing before the planning commission, all persons wishing to speak for or against the application shall be heard. Recommendations or other input from the director of planning may also be heard prior to any decision by the planning commission.
- (e) *Criteria.* The planning commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:
 - (1) The effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. For the purposes of this section, the term "premises" means the entire project site of a shopping center;
 - (2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties shall be soundproofed. In the event music and entertainment are permitted, the premises shall be air conditioned;
 - (3) Access, traffic generation, road capacities, and parking requirements;
 - (4) Demands upon utilities, community facilities and public services; and
 - (5) Compliance with the county's restrictions or requirements and any valid regulations.
- (f) *Approval by planning commission.* The planning commission may grant approval based on reasonable conditions considering the criteria outlined herein.
- (g) *Where permitted.* Alcoholic beverage use permits may be granted in the following land use districts: urban commercial; suburban commercial; suburban residential where the site abuts U.S. 1; destination resort; mixed use; industrial and maritime industries. Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Nothing contained herein shall exempt an applicant from obtaining a major or minor conditional use approval when such is otherwise required by the county development regulations in part II of this Code.
- (h) *Transferability.* Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property that has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
- (i) *Appeals.* All persons aggrieved by the actions of the planning commission in granting or denying requested alcoholic beverage permits may request an appeal hearing before a hearing officer under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days after the date of the written decision of the planning commission.
- (j) *Successive applications.* Whenever any application for alcoholic beverage approval is denied for failure to meet the substantive requirements of these regulations, an application for alcoholic beverage approval for all or a portion of the same property shall not be considered for a period of two years unless a super-majority of the planning commission decides that the original decision was based on a material mistake of fact or that there exists changed conditions and new facts, not existing at the time of the original decision, that would justify entertaining a new application before the expiration of the two-year period. However, in the case of a shopping center, as defined in subsection (d)(3) of this section, this subsection shall only apply to the commercial retail unit within the shopping center for which approval was sought and not the entire shopping center site itself.

(Code 1979, § 19-218; Ord. No. 1-1973, § 1(art. XI, § 5); Ord. No. 5-1974, § 27; Ord. No. 20-1975, § 67; Ord. No. 29-1978, § 1; Ord. No. 5-1979, § 1; Ord. No. 17-1980, § 12; Ord. No. 4-1985, §§ 1, 2; Ord. No. 39-1986, § 2; Ord. No. 55-1987, §§ 1—3; Ord. No. 19-1993, § 14)